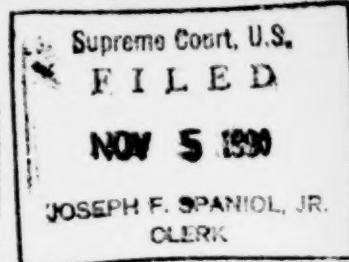


90-723

No.



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1990

MASHUQ A. QURESHI, M.D., Petitioner

Vs.

PHICO INSURANCE COMPANY, et al Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Mashuq A. Qureshi, M.D.
Petitioner

611 South Carlin Springs Rd.
Suite 104
Arlington, Virginia 22204
(703) 379-8030

QUESTIONS PRESENTED

1. Did the U.S. Court of Appeals not condone the failure of the District Court in applying to Phico Insurance policy the Virginia code definition of the word "termination of insurance" which was synonymous with nonrenewal of insurance?
2. Did the U.S. Court of Appeals not condone the failure of the District Court in allowing discrimination against the petitioner by National Capitol Insurance Company (NCRIC) in violation of the District of Columbia code, Section 35-1533 against such discrimination?
3. Did the U.S. Court of Appeals not condone the District Court's violation of petitioner's right to due process under the 5th and 14th Amendments of the U.S. Constitution?



PARTIES

MASHUQ A. QURESHI, M.D.
Suite 104
611 South Carlin Springs Road
Arlington, VA 22204

Petitioner

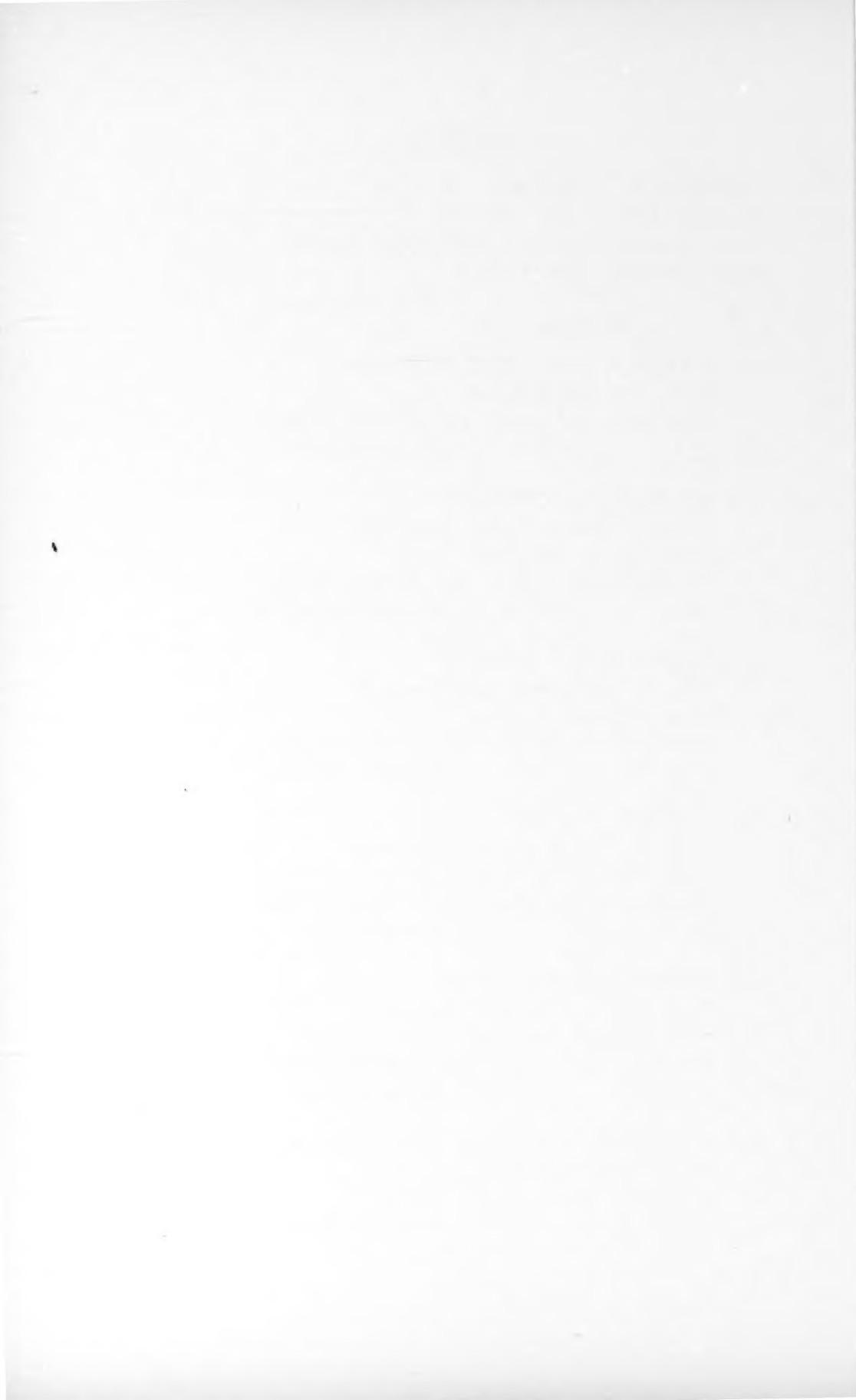
Versus

1. PHICO INSURANCE COMPANY
One Phico Drive
Mechanicsburg, PA 17055-0085
Respondant
2. DONALD G. STEFFES
Phico Insurance Company
One Phico Drive
Mechanicsburg, PA 17055-0085
Respondant
3. MAYNARD R. STUFFT
Phico Insurance Company
One Phico Drive
Mechanicsburg, PA 17055-0085
Respondant
4. ARTHUR BECKER
Phico Insurance Company
One Phico Drive
Mechanicsburg, PA 17055-0085
Respondant
5. JOSEPH RICKI, M.D.
Phico Insurance Company
One Phico Drive
Mechanicsburg, PA 17055-0085
Respondant
6. NATIONAL CAPITOL RECIPROCAL INSURANCE CO.
2007 Eye Street, N.W.
Washington, D.C. 20006
Respondant



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No.

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA

OCTOBER TERM 1990

MASHUQ A. QURESHI, M.D. Petitioner
Vs.

PHICO INSURANCE COMPANY, et al, Respondents

Petition for writ of certiorari to the
United States Court of Appeals for the
District of Columbia Circuit.

Petitioner Mashuq A. Qureshi, M.D.
(Herein after Dr. Qureshi), respectfully
prays that a writ of certiorari issue to
review the judgment and opinion of the
United States Court of Appeals for the
District of Columbia Circuit for up-
holding the dismissal of his claims
against (a) Phico Insurance Company

and its officials for nonrenewal of his liability insurance. (b) National Capitol Reciprocal Insurance Company for discrimination and arbitrary denial for issuance of liability insurance.

OPINIONS BELOW

The opinions of the Court of Appeals appear in appendix C and Appendix E. The unpublished written opinions of the U.S. District Court for the District of Columbia appear in Appendix A,B,& D to this petition.

JURISDICTION

The Court of Appeals' final opinion in this matter was filed on June 5, 1990. A timely petition for rehearing was filed on July 5, 1990. The Court of Appeals' denial of the petition for rehearing was issued on August 6, 1990 and is set forth in Appendix F. This courts jurisdiction is invoked under Title 28, U.S.C. Section 1254 (1).

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

Amendments 5 and 14 to the Constitution of the United States are set forth in Appendixes L & M. D.C. Code Section 35-1533 is set forth in Appendix J.

The year 1981 Virginia Code Section 38.1-57.5, definition # 24 is set forth in Appendix I.

STATEMENT OF THE CASE

The United States District Court for the District of Columbia had jurisdiction pursuant to Title 28, Section 1332. On October 30, 1986, the District Court issued memorandum opinion and order wherein the respondents motion to transfer the action to the District Court of the Eastern District of Virginia was denied and the respondents motion to dismiss against Donald Steffes, Maynard

Stufft, Arthur Becker, and Joseph Ricci,
M.D. was granted. (Appendi.A).

On August 4, 1987, the District
Court issued memorandum opinion and order
and dismissed the action against the re-
spondents by summary judgment. (Appendi.B).

On June 2, 1988, the U.S. Court of
Appeals of the District of Columbia Cir-
cuit by order granted the motion for
summary judgment for respondent National
Capitol Reciprocal Insurance Company, but
denied the motion for summary judgment
for the Phico Insurance Company. The
matter was remanded to the District
Court for reasons set forth in an
accompanying memorandum (Appendi.C).

On August 31, 1989, the District
Court issued memorandum opinion and by
an order granted the motion for summary
judgment of respondent Phico Company and
dismissed the case. (Appendi.D).

On June 5, 1990, the Court of Appeals granted the respondent Phico Insurance Company's motion for summary affirmance and respondent National Capitol Reciprocal Insurance Company's motion to dismiss. (Appendix E).

On August 6, 1990, the Court of Appeals denied the petitioner's petition for rehearing. (Appendix F.)

FACTS OF THE CASE

(1) Petitioner's claim against Phico Insurance Company and its officials Steffes, Stufft, Becker and Ricci, M.D : These respondents, effective 10/15/85, terminated the liability insurance of petitioner wrongfully by failing to give petitioner a 60 day notice of non renewal (termination) and stated reasons for non renewal. Condition Number 7 in the Phico policy agreement had a provision to give a 60 day notice of termination and stated



reasons to the petitioner, (Appendix G). The respondents ostensibly used the word "non renewal" instead of "termination" in their notice of non renewal. (Appendix H). They gave only a 41 day notice of non renewal, without stated reasons. According to the Virginia Code, Volume 6A, 1981 replacement volume, Section 38.1-57.5-definition No. 24 (Appendix I) which was applicable to the policy in 1985 and reads: "Termination of Insurance coverage or termination of an insurance policy" means either a cancellation or non renewal of an insurance policy, in whole or in part, for any reason other than failure to pay premium as required by the policy."

Herein, the applicable definition of Code of Virginia for the interpretation of the Phico policy equated non renewal with termination, as synonymous. Hence

by the definition of Code of Virginia,
Phico breached its contract with the
petitioner regarding condition Number 7 of
its policy for liability insurance.

The officials of Phico willfully,
arbitrarily and capriciously disregarded
the provisions of the policy and terminat-
ed it wrongfully. Hence, they were indivi-
dually liable for their actions.

(2) Petitioner's claim against National
Capitol Reciprocal Insurance Company
(NCRIC): The petitioner's application for
liability insurance was wrongfully denied
by this respondent although its conditions
had been met. The petitioner was a lic-
ensed physician of the District of Col-
umbia and was a bona fide member of the
District of Columbia Medical Society. In
such a capacity, the petitioner was en-
titled to insurance, since NCRIC is an
arm of the D.C. Medical Society. The



petitioner was discriminated by NCRIC arbitrarily and capriciously and in violation of District of Columbia Code, Section 35-1533 (Appendix.J) which prohibits discrimination between individual risks of the same class and in any manner whatsoever.

REASONS FOR GRANTING THE WRIT

The writ for certiorari should be granted under the discretionary provisions of Rule 10 of this court as enunciated under its sections (a) and (c): (1) Under rule 10 (a) of this court: (A) The U.S. Court of Appeals had sanctioned the departure by the District Court in disregarding the applicable 1985 Virginia Code Section 38.1-57.5 definition NO. 24 (Appendix.I) of the word "termination" of insurance which is synonymous with non renewal. The definition was to be used to interpret

Condition No. 7 of the Phico Insurance policy, (Appendix G). The District Court should then have found that the respondent Phico Insurance Company failed to give a 60 day notice of termination (viz non renewal) of the insurance policy and failed to give written reasons therefor in contravention of its contract as embodied in Condition No. 7 of the Phico Insurance Policy , (Appendix G). It states in pertinent: IX Condition 7 " The company will not terminate the policy except for suspension or revocation of the insured's license or approval to provide health care services or for non payment of premium, unless a written notice stating the reasons for the termination and the date and time upon which termination becomes effective has been mailed to the insured 60 days prior to termination." Herein termination was synonymous with



non renewal under the applicable definition No. 24 of the Code of Virginia 1981 , (Appendix I).

Since the respondent Phico Insurance Company failed to give written reasons and gave only a 41 day notice of termination (viz non renewal)(Appendix H) the respondent was in breach of contract. The petitioner was duly licensed and had full approval to provide health care services by the state of Virginia and the District of Columbia. The petitioner had paid his premium for the policy already. There was no condition in the policy which clarified the meaning of the word termination. The word termination was synonymous with non renewal under the applicable Virginia Code , (Appendix I).

The District Court should have found the breach of contract of the policy by the respondent Phico Insurance Company.

The U.S. Court of Appeals sanctioned the departure by District Court. This court has a calling for an exercise of its power of supervision.

(B) The U.S. Court of Appeals had sanctioned the departure by the District Court in disregarding the discrimination done by the respondent NCRIC and its officials against the petitioner in violation of Section 35-1533 of the applicable D.C. Code (Appendi. J). Since the petitioner had qualified for liability insurance by being a member of the D.C. Medical Society of which NCRIC was an arm, and was duly licensed in the District of Columbia and Virginia, (Appendi. K) NCRIC denied insurance to the petitioner arbitrarily and capriciously. This court is called for exercise of its power of supervision. (2) Under rule 10 (c) of this court: The U.S. Court of Appeals has failed to safeguard the petitioner's

rights under the Constitution of the United States which were violated by the District Court. In fact, the District Court denied due process to petitioner under the 5th (Appendi.L) and 14th (Appendi.M) amendments. The District Court should have found that respondent Phico Insurance Company had breached its contract with the petitioner for terminating (non renewing) the policy without giving a 60 day notice and stated reasons. The District Court should have found that NCRIC had discriminated against the petitioner under the provisions of D.C. Code Section 35-1533 in denying insurance arbitrarily and capriciously. NCRIC was subject to D.C. Code for its operations since it was registered with the Government of the District of Columbia and had an office there.



CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in condoning the violation of the rights of the petitioner by the District Court under the Law of Contract, Virginia Code, D.C. Code and the Constitution of the United States.

Respectfully submitted,

MASHUQ A.  Qureshi, M.D.

petitioner

PRO SE

Dated November 5 , 1990



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MASHUQ A. QURESHI, M.D.) FILED
Plaintiff) OCT 30 1986.
v.)
PHICO INSURANCE COMPANY, et al.,)
Defendants) No.
) 86-1964

MEMORANDUM OPINION AND ORDER

Plaintiff filed this suit pro se seeking injunctive relief and damages based on the decision by defendants Phico Insurance Company ("Phico"), Donald G. Steffes, Maynard R. Stufft, Arthur Becker, and Joseph Ricci, M.D. not to renew plaintiff's professional liability insurance policy and based on a decision by defendant National Capitol Reciprocal



Insurance Company ("NCRIC") not to issue a professional liability policy to plaintiff. Defendants Phico, Steffes, Stufft, Becker, and Ricci have moved to transfer this action to the United States District Court for the Eastern District of Virginia on forum non conveniens grounds. In the alternative, these defendants move to dismiss the individual defendants.

Upon consideration of the papers filed in this action, the Court shall deny defendants motion to transfer this case and shall grant the motion to dismiss the individual defendants.

DISCUSSION

Forum Non Conveniens

A district court "for the convenience of parties and witnesses, in the interest of justice,...may transfer any civil action to any other district or

division where it might have been brought." 28 U.S.C. § 1401 (a). Defendants bear the burden of establishing that a change of venue is appropriate. See, e.g., Hodgdon v. Needham-Skyles Oil Co, 556 F. Supp. 75, 79-80 (D.D.C. 1982). Indeed, "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." Hodson v. A.H. Robins Co., Inc. 528 F. Supp. 809, 817 (E.D. Va. 1981) (citing Gulf Oil v. Gilbert, 330 U.S. 501, 508 (1947)). aff'd, 715 F. 2d 142 (4th Cir. 1983).

Defendants argue that the Eastern District of Virginia is the proper forum for this action because: (1) Virginia law will apply; (2) the insurance contract was negotiated in Virginia; (3) plaintiff's medical practice is in Virginia; and (4) plaintiff's policy was not renewed largely due to his denial of staff priv-

ileges at Alexandria Hospital. The insurance policy in dispute, however, appears to provide insurance coverage for plaintiff's medical practice in both the District of Columbia and Virginia. Pltf. Opp. Exh. 1-3. Plaintiff alleges that the denial of professional liability insurance has resulted in the Washington Hospital Center precluding him from admitting patients to the Center. Defendant NCRIC, moreover, is located in Washington, D.C. and any alleged wrongdoing presumably occurred in the District of Columbia.

While defendants note that the non-renewal of the insurance policy was related to Dr. Qureshi's denial of hospital privileges at Alexandria Hospital, this does not suffice to justify a transfer to another jurisdiction. Defendants allege that plaintiff's practice is in Virginia, but fail to acknowledge that he also

apparently has a business address in the District of Columbia. 1/ The original policy was negotiated in the District of Columbia, although subsequent renewals were executed in Virginia when the insurance broker moved his office to McLean, Virginia. 2/

Resolution of this dispute in this jurisdiction will be no more than minimally inconvenient to the witnesses. The Court, at this time, does not find a sufficient basis to disturb plaintiff's choice of forum. See In Re Scott, 709 F. 2d 717, 721 (D.C. Cir. 1983) (a federal court may not order a transfer "merely to serve its personal convenience") Defendants motion to transfer the case to the United States District Court for the Eastern District of Virginia, Alexandria Division, therefore, shall be denied.



1/ Defendant NCRIC submitted evidence of this District of Columbia address in their motion to dismiss. See also Pltf. Opp. Exh. 1-3.

2/ The Court places no merit in plaintiff's claim that he would be prejudiced by a transfer of this case to the Eastern District of Virginia where he has filed suit against Alexandria Hospital for termination of his privileges.

Individual Defendants

Defendants argue that the individuals named in the complaint are insulated from corporate liability because plaintiff failed to make a good faith demonstration that the individual officers should be personally liable for the nonrenewal of the insurance policy. Generally, individual corporate officers are not personally liable for a corporation's alleged breach of contract if they acted in good faith and for the benefit of the corporation. See Lubrication and Maintenance, Inc. v. Union Resources Company, Inc. 522 F. Supp. 1078 (S.D.N.Y. 1981) (officers



not personally liable for causing corporation to breach contract where evidence established that they acted solely in their capacities as officers) 3

Fletcher Cyclopedia of the Law of Private Corporations § 1001 (1975) (by acting in good faith the officers "are but the agents of the corporation and... the breach is that of the corporation, and hence it alone is answerable") Here

The individual defendants were not parties to the insurance contract between plaintiff and the defendant corporation.

Three of the four individual defendants, moreover, are not involved in any aspect of the corporation's underwriting of insurance policies. Plaintiff has failed to allege any facts to support a claim of malicious or bad faith breach of contract nor has plaintiff alleged that the defendants were motivated by personal

profit or that they "engaged in tortious conduct separate from....(their) conduct asdirector(s)." Stratford Group, Ltd. v Interstate Bakeries, 590 F. Supp. 859, 865 (S.D.N.Y. 1984) claim against directors for inducing breach of contract dismissed for failure to state a claim for relief.)

Plaintiff argues that the individual defendants "cannot claim a privilege or immunity under the corporate veil of Phico" Complaint ¶ 19. Generally, a corporation is a separate entity, distinct from its shareholders, officers and directors. See, e.g., Vuitch v. Furr, 482 A. 2d 811 (D.C. App. 1984). To pierce the corporate veil plaintiff must prove that there is unity of ownership and interest and the use of the corporation to perpetrate fraud or wrong. Id. at 815; Penick v. Frank E. Basil, Inc. of Del-

aware, 579 F. Supp. 160, 165 (D.D.C. 1984) (quoting McAulliffe v. C & K Builders, 142 A. 2d 605, 607 (D.C. Mun. App. 1958)), aff'd, 744 F. 2d 878 (D.C. Cir. 1984). 3/ Plaintiff alleges that on several occasions he wrote to, spoke to or received correspondence from the individual defendants. These factual allegations, however, are not sufficient to pierce the corporate veil. Plaintiff's general allegations of malicious conduct cannot withstand the motion to dismiss, and therefore, the defendants' motion to dismiss the individual defendants shall be granted.

Accordingly, it is this 29th day of October, 1986.

3/ Examples of activity which might pierce the corporate veil include failure to maintain corporate records, and the commingling of funds and other assets of the corporation. Labadie Coal Co v. Black, 672 F. 2d 92 (D.C. Cir. 1982)



ORDERED that defendant's motion to transfer this action to the United States District Court for the Eastern District of Virginia is denied; and it is

FURTHER ORDERED that defendants' motion to dismiss defendants Donald G. Steffes, Maynard R. Stufft, Arthur Becker and Joseph Ricci, M.D. is granted and the claims related to these individual defendants are dismissed; and it is

FURTHER ORDERED that pursuant to Fed. R. Civ. P. 16 (b) a scheduling conference shall be conducted on November 21, 1986 at 10:00 A.M. in Courtroom # 9, 4th floor, U.S. Courthouse.

Signed.

Thomas F. Hogan
United States District
Judge.



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MASHUQ A. QURESHI, M.D.,) FILED AUG 4, 1987
Plaintiff)
)
v.) Civil Action
PHICO INSURANCE COMPANY) No. 86-1964
)
and)
)
NATIONAL CAPITAL RECIPROCAL)
)
INSURANCE COMPANY,)
)
Defendants)
)

MEMORANDUM OPINION

Plaintiff, acting pro se, brought this action against Phico Insurance Company ("Phico") and its employees¹/ alleging that Phico failed to give timely notice of its decision not to renew plaintiff's professional liability insurance policy in violation

1/ On October 29, 1986, the Court granted Phico's motion to dismiss the individual defendants.



of statutory and common law. Dr. Qureshi, a physician specializing in internal medicine and cardiology, also named the National Capital Reciprocal Insurance Company ("NCRIC") as a defendant to challenge its subsequent rejection of his insurance application as an arbitrary and capricious decision.

This matter is presently before the Court on defendants' motions for summary judgement. Upon consideration of the two motions, plaintiff's opposition thereto, and the entire record in this action, the Court shall grant both motions for summary judgment.

STATEMENT OF FACTS

In October, 1980, plaintiff applied to Phico for medical professional liability insurance. On his application Dr. Qureshi gave a Falls Church, Virginia billing address, noting that 75 percent of his practice was in Virginia and that he had privileges at nine area hospitals,

eight of which are located in Virginia. Phico accepted his application and issued plaintiff a professional liability policy for the period October 15, 1980 to October 15, 1981. For the next four years Phico renewed plaintiff's policy.

On June 18, 1985, Dr. Qureshi notified Phico that the Alexandria Hospital had suspended his staff privileges allegedly for improper patient care in the hospital's Emergency Room. 2/

2/ Phico initially asserted that during the four years plaintiff was insured by the company he had four claims result in settlements totaling \$60,000.00. These claims, however, were not filed against Dr. Qureshi while he was under Phico coverage. A subsequent review, though, has revealed that three claims were filed against plaintiff during the period he was insured by Phico.



On September 4, 1985, Phico informed plaintiff that it would not renew his insurance policy due to expire on October 15, 1985.

Dr. Qureshi did not object to the non-renewal, nor did he accept an offer by Phico to purchase a retroactive reporting policy option (or "tail" coverage as it is known in the industry).

On October 14, 1985, plaintiff applied to St. Paul Insurance Company for professional liability insurance. St. Paul Insurance Company would not issue an insurance policy to Dr. Qureshi. On February 9, 1986, plaintiff submitted an application for insurance to NCRIC. NCRIC, too, declined to issue a professional liability policy to plaintiff. Based on the information set forth in plaintiff's application, NCRIC advised plaintiff, in a letter dated February 20, 1986, that it could not accommodate him due to Dr.

Qureshi's "prior claim history, the denial of hospital privileges, revocation of hospital privileges and the lapse in coverage."^{3/} Pltf. Exh. 3.

DISCUSSION

Summary judgment is appropriate when there are no genuine issues of material fact such that the movant is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56. The Supreme Court has noted that

^{3/} The Physician Insurance Program of the Virginia Insurance Reciprocal, Medical Protective Company, and ICM also declined to issue Dr. Qureshi insurance. JUA Insurance Company, after initially rejecting plaintiff's application, has agreed to provide plaintiff with professional liability insurance.



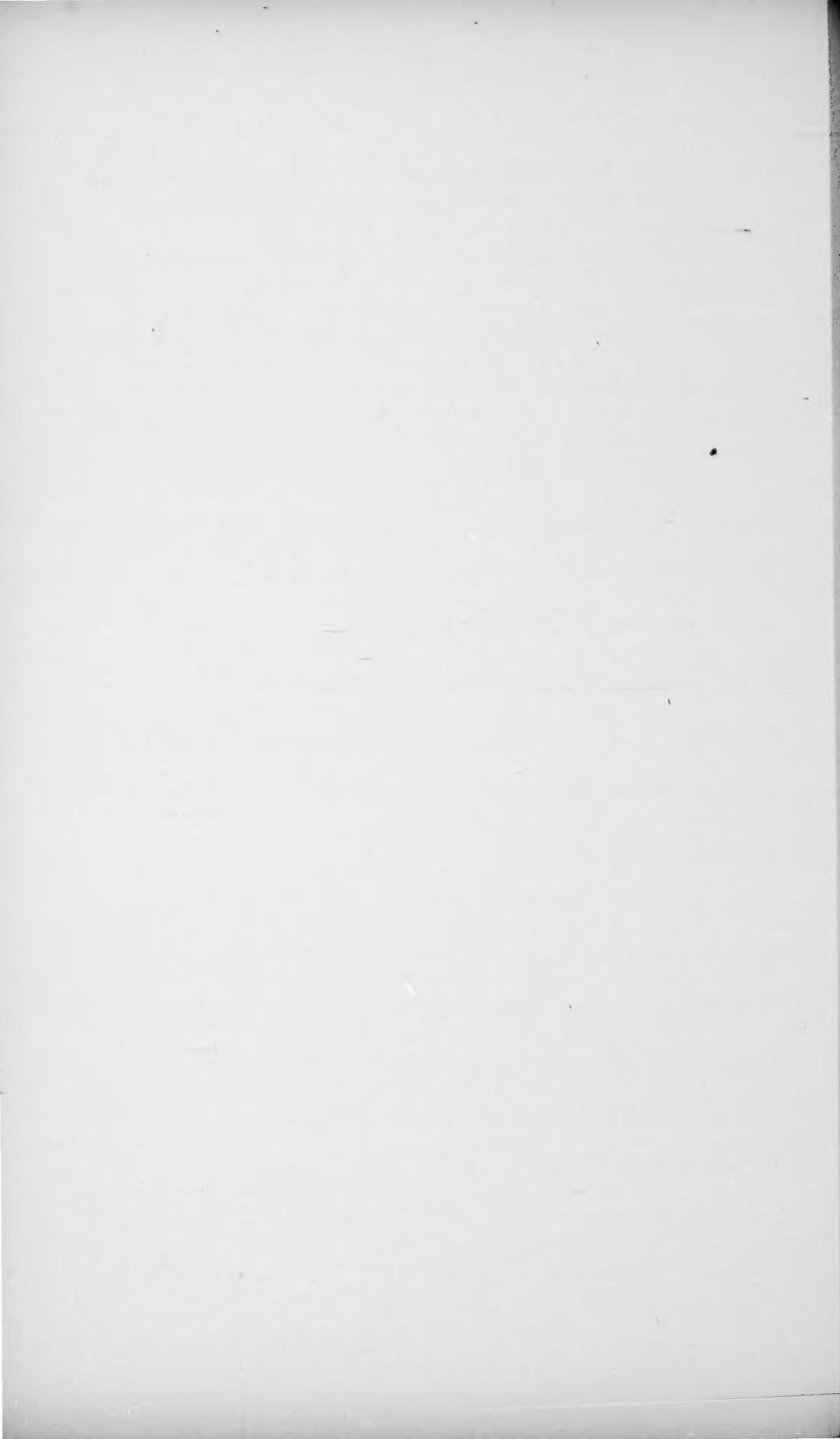
Rule 56 must be construed with due regard not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury, but also for the rights of persons opposing such claims and defenses to demonstrate in the manner provided by the Rule, prior to trial, that the claims and defenses have no factual basis.

Celotex Corporation v. Catrett, 106 S. Ct. 2548, 2555 (1986). Thus, the Court must approach summary judgment with an even hand, evaluating all concrete evidence provided, and drawing inferences in favor of the party opposing the motion.

Choice of Law

At the outset, the Court must decide which law to apply in this diversity action. Under the choice of law test of this jurisdiction, the applicable law is that of the state with the "more substantial interest in the resolution of the issue."

Owen v. Owen, 427 A.2d 933, 937 (D.C. 1981)



(quoting Fowler v. A & A Company, 262 A.2d 344, 348 (D.C. 1970)). In determining which law to apply, the following factors should be considered: "(1) the place of contracting, (2) the place of negotiation of the contract, (3) the place of performance of the contract, (4) the location of the subject matter of the contract, and (5) the place of incorporation and the place of business of the parties."

Koro Company, Inc. v. Bristol-Meyers Co., 568 F. Supp. 280, 286 (D.D.C. 1983).

Plaintiff has 75 percent of his practice in Virginia and most of his staff privileges at Virginia hospitals. Dr. Qureshi purchased his Phico insurance policy through a Virginia insurance agent and received notices pertaining to his Phico policy and CRIC applicaiton at a Virginia insurance agent and received notices pertaining to his Phico policy

and NCRIC application at a Virginia address. Phico's decision not to renew plaintiff's policy was based primarily on the suspension of Dr. Qureshi's staff privileges at Alexandria Hospital.

Although Phico and CRIC have offices in the District of Columbia, Virginia clearly has the more substantial interest in this matter. The Court, therefore, shall look to pertinent Virginia law in resolving the pending motions.

Phico's Motion For Summary Judgment

Plaintiff claims that under his Phico insurance policy the Company was required to give him 60 days notice of nonrenewal. Section 7 of the policy states:

Termination: This policy may be terminated by the named insured by written notice to the Company stating when thereafter the termination shall be effective.



The Company will not terminate this policy, except for suspension or revocation of the insured's license or approval to provide health care services or for nonpayment of premium, unless notice of such termination shall have been given within 60 days after the initial effective date of the insured's coverage or unless a written notice stating the reasons for the termination and the date and time upon which termination becomes effective has been mailed to the insured 60 days prior to termination.
In the event of termination as set forth herein, earned premium will be computed pro rata. Premium adjustment may be made either at the time termination is effected or as soon as practicable after termination becomes effective, but payment of tender of unearned premium is not a condition of termination.

Pltf. Exh. 3. (emphasis added). Defendant contends that "termination" refers to the "cancellation" of the policy before the expiration of the policy period. In the context of Section 7, Phico asserts "termination" does not encompass nonrenewal.

As one learned treatise notes, there is a distinction between the refusal to renew a policy and the cancellation or termination of an existing policy.



Couch on Insurance, 68:6 (1983). "Since the refusal to renew a policy which has terminated is distinct from the cancellation of an existing policy, it is clear that presence of a clause limiting the right to cancel does not curtail the insurer's right to refuse to renew a policy." Id.

Section 7 specifies when the company (or the insured) may terminate, that is cancel, a policy prior to the expiration of the term. It requires Phico to inform its client when the termination becomes effective, presumably a time other than the scheduled expiration date. Nonrenewal, however, does not result in an early termination of the policy thereby triggering the notice requirements of Section 7; nonrenewal only occurs once a policy has run



its course. 4/ The Phico policy draws an explicit distinction between termination and nonrenewal.

Section 8 provides for tail coverage "upon termination or nonrenewal."

(Emphasis added.) If Phico had intended

4/ In a letter to Dr. Qureshi, David S. Long, the independent insurance agent, stated "use of the word termination referred to the ceasing of coverage and is generally considered in the industry as an interchangeable term applicable to either cancellations or nonrenewal."

P.tf. Exh. 2. This statement refers to Mr. Long's use of the word "termination" in a June 10 letter to plaintiff in which he informed Dr. Qureshi that Phico had complied with the Virginia statutory notice requirements. This statement, moreover, was made on May 5, 1987, long after plaintiff filed suit, in response to an inquiry by plaintiff after Phico filed its motion for summary judgment. In a somewhat belated clarification, Mr. Long has represented that he understood "termination" in Paragraph 7 to cover only a cancellation of the policy prior to its expiration date. Long Affidavit 4.



Section 7 to apply to nonrenewal decisions it could have so stated as it did in Section 8. The Court finds, accordingly, that the notice requirements of Phico's policy apply to the cancellation of the policy prior to its expiration, and are not directed at a decision of nonrenewal.5/

Phico, furthermore, did not violate any statutory notice requirements. At

5/ Plaintiff had been on notice since October 15, 1984 that his policy would expire one year later. Despite 35 days additional notice, Dr. Qureshi apparently waited until the day before his policy expired to submit an application to another insurance agency. Even if plaintiff could establish he was entitled to 60 days notice, he would encounter difficulty in proving damages. Five other companies declined to issue him insurance. It was not until April, 1987, well past any 60 days notice which might have been given to plaintiff, that an insurer agreed to issue a policy.



the time it made its decision not to renew plaintiff's policy, Virginia required 15 days notice of nonrenewal. Virginia Code, 38.1-38.5 (e)(2). Phico gave Dr. Qureshi 35 days notice. Contrary to plaintiff's assertion, Virginia did not amend its code until 1986 to require an insurer to provide at least 45 days notice of cancellation or nonrenewal. VA.Code 38.2-231 (1987).6/

6/ This section of the Code covers cancellation, refusal to renew, reduction in coverage or increase in sale of certain liability insurance policies.



Plaintiff has presented no questions of material fact for a jury to consider nor has he proffered evidence to establish the essential element of his case. See Anderson v. Liberty Lobby, Inc., 106 S. Ct. 2505 (1986). As a matter of law, Phico is entitled to summary judgment.

NCRIC's Motion For Summary Judgment

Plaintiff claims that NCRIC arbitrarily and capriciously refused to offer him insurance. Dr. Qureshi asserts he was entitled to NCRIC insurance because he was a member of the District of Columbia Medical Society. NCRIC, however, was under no statutory, contractual or common law duty to provide plaintiff with professional liability insurance.

Plaintiff suggests that under the Rules, Regulations and Bylaws ("Bylaws") of NCRIC, the company had an obligation to issue him an insurance policy.

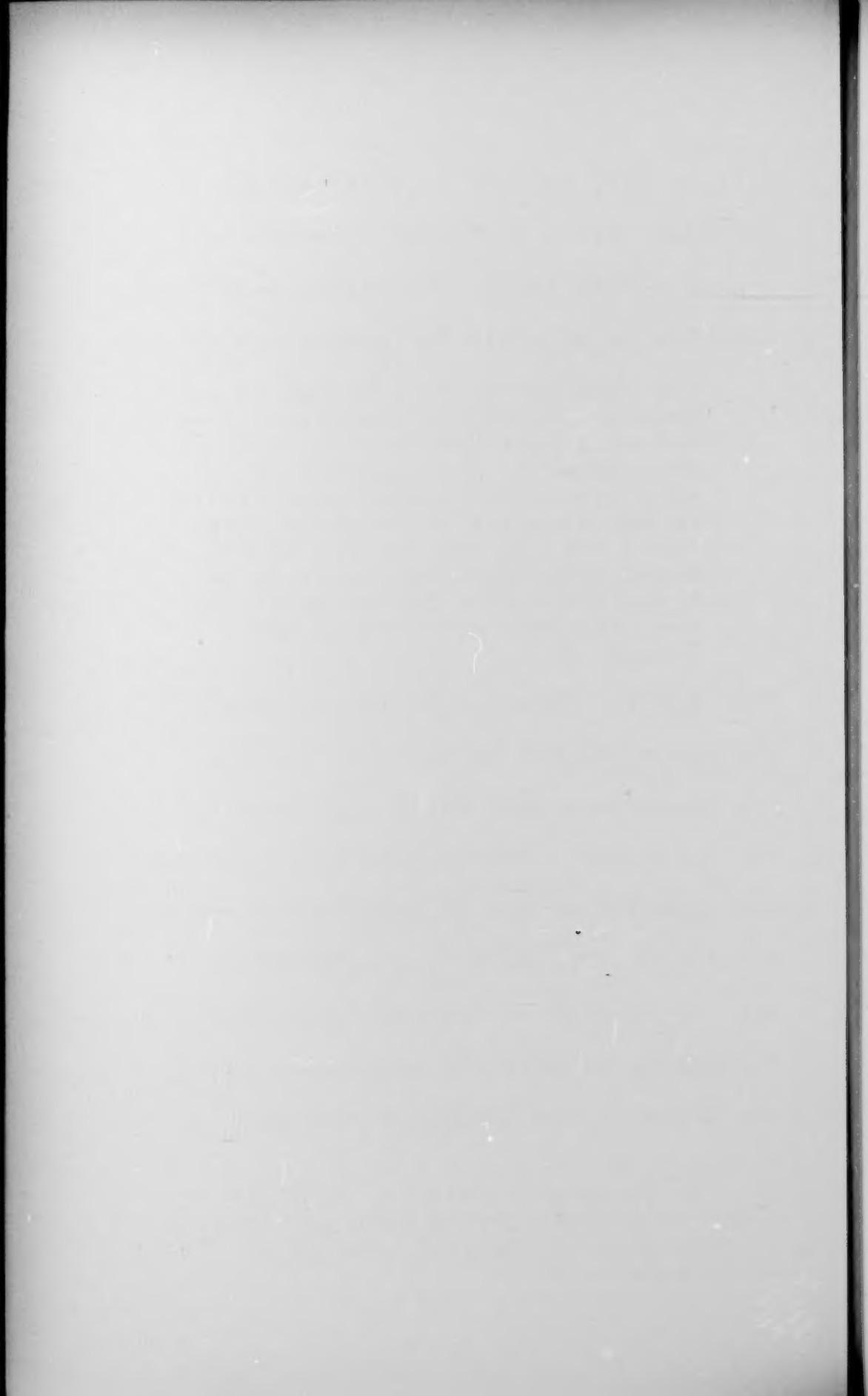


Article III, Section 1 of the Bylaws provides that a physician licensed to practice medicine in the District of Columbia is eligible for membership if:

(i) such person is a member of the Medical Society of the District of Columbia (the "Society"), (ii) is engaged in the practice of medicine or osteopathy principally in the District of Columbia, and (iii) who, in the opinion of the Attorney-in-Fact is deemed to be a desirable risk for purposes of the insurance afforded by the Company.7/

Pltf.Exh.1. These criteria are merely prerequisites for eligibility and are not guarantees that NCRIC will ensure the applicant. Dr. Qureshi's application failed under part 3 of Article III, Section 1, because of his prior claim history, denial of hospital privileges, revocation of hospital privileges and the lapse in his insurance coverage.

7/ The Attorney-in-Fact is an NCRIC underwriter who reviews each application to determine if the applicant is an acceptable risk.



Dr. Qureshi does not dispute the basis on which NCRIC made its decision.^{8/} The materials from the medical society do not create an express or implied contract. NCRIC was under no legal duty to provide plaintiff with the insurance he sought. ^{9/} Summary judgment, therefore, shall be entered for NCRIC. An order consistent with the foregoing conclusions accompanies this memorandum opinion.

Thomas F. Hogan
United States District Judge

Date: August 3rd, 1987

8/ Plaintiff provided NCRIC with the information which led to the rejection of his application. Although plaintiff may object to the adverse action taken against him by various hospitals, he has not denied that his privileges have been revoked, suspended or denied. Plaintiff's Exhibit's 7 through 17 are of no relevance to resolution of this matter since they are all dated after NCRIC declined to issue him insurance, with the exception of a letter written by Dr.Qureshi to another physician.

9/ Even if plaintiff could establish a legal basis for his claim, he has failed to present evidence which could lead a reasonable juror to conclude that NCRIC's action was arbitrary and capricious. "If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Anderson v. Liberty Lobby, Inc., supra, 100 S. Ct. at 2511.



UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

MASHUQ A. QURESHI, M.D.,)
)
Plaintiff)
)
v.) Civil Action
)
PHICO INSURANCE COMPANY)
)
and) No. 86-1964
)
NATIONAL CAPITAL RECIPROCAL)
)
INSURANCE COMPANY,)
)
Defendants)
)

O R D E R

In accordance with the terms of the accompanying memorandum opinion, it is this 3rd day of August, 1987.

ORDERED that defendants' motions for summary judgment are granted and this action is dismissed in its entirety with prejudice.

Thomas F. Hogan

United States District Judge



UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 87-7175

FILED JUN 02, 1988

MASHUQ A. QURESHI, M.D.,

Appellant

v.

PHICO INSURANCE COMPANY, et al.

BEFORE: Silberman, D.H. Ginsburg and Sentelle,
Circuit Judges

O R D E R

Upon consideration of appellee's
motions for summary affirmance and the
opposition thereto, it is

ORDERED by the court that National
Capital Reciprocal Insurance Company's
motion for summary affirmance be granted
for the reasons stated by the district
court in its Memorandum Opinion filed
August 4, 1987. It is

FURTHER ORDERED that Phico Insurance
Company's ("PHICO") motion for summary
affirmance be denied. It is

Appendix C

{

}

FURTHER ORDERED on the court's own motion that the case with regard to Phico be remanded to the district court for the reasons set forth in the accompanying memorandum.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing.

See D.C. Cir. Rule 15.

Per Curiam



No. 87-7175 - Qureshi v. Phico Insurance Company and National Capital Reciprocal Insurance Company

MEMORANDUM

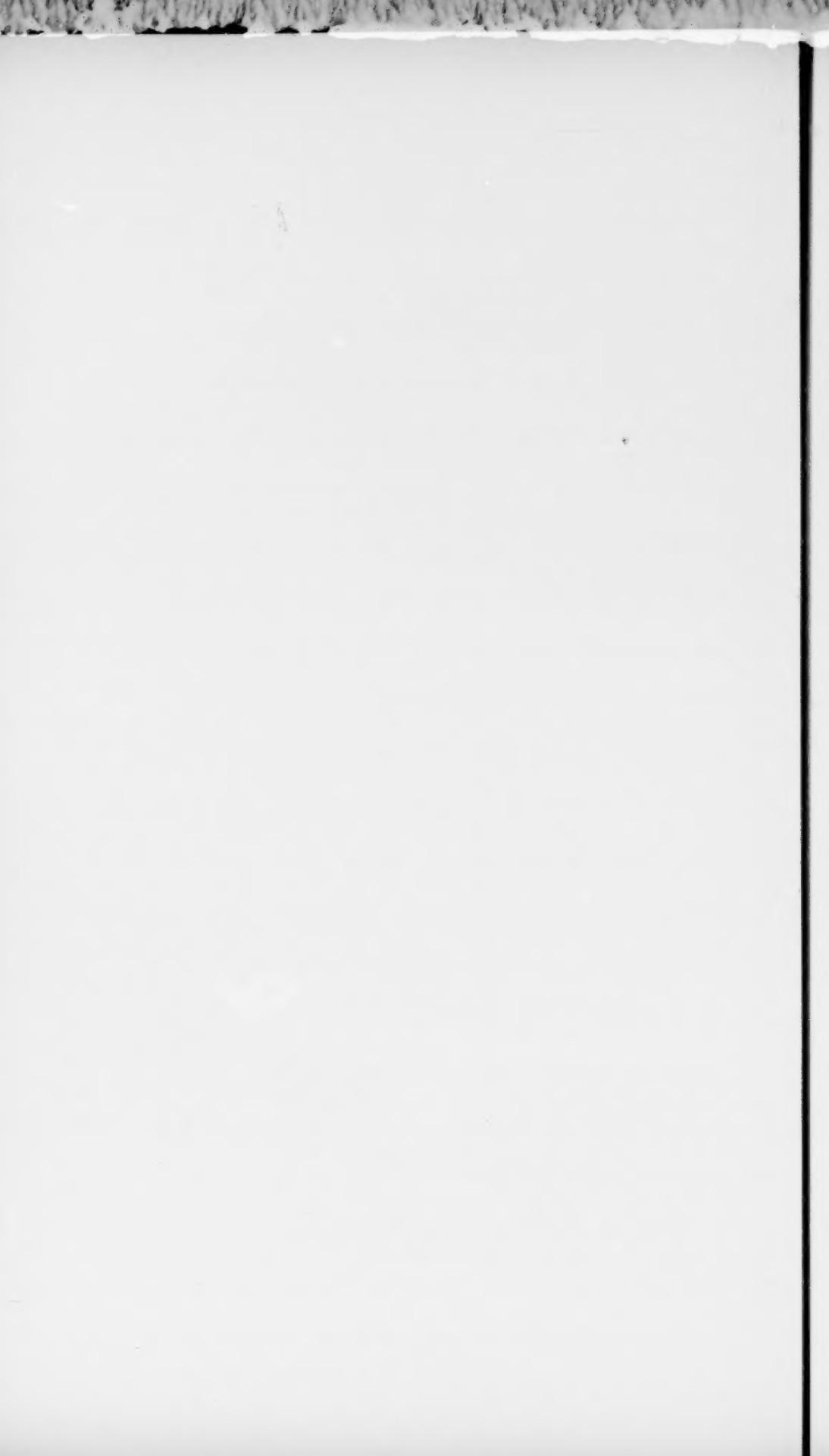
In its Memorandum Opinion filed August 4, 1987, the district court found that at the time Phico Insurance Company ("Phico") made its decision not to renew Dr. Qureshi's ("Qureshi") insurance policy, Virginia required fifteen days notice of nonrenewal. Since it is undisputed that Dr. Qureshi received thirty-five days notice the district court concluded that Phico met its statutory notice requirement. See Qureshi v. Phico Insurance Company and National Capital Reciprocal Insurance Company, No. 86-1964, slip op. at 7, (D.D.C. Aug.4, 1987).

In its motion for summary affirmance, Phico has argued that the statutory notice requirement ultimately relied upon by the



the district court was "Virginia Code, Section 38.1-38.5(e)(2)." We assume that this is a miscitation and that Phico and the district court meant to refer to Virginia Code, Section 38.1-381.5(e)(2) (1985). At this stage, it is unclear whether this section is the appropriate and applicable section. Accordingly, we remand the case. If indeed this is the appropriate section, then we suggest that the district court first make a determination as to how this section (concerning motor vehicle insurance) applies to Qureshi's professional liability insurance.

Assuming that this section of the code properly applies to this case, the district court should address the exceptions to the notice requirement as found in Section 38.1-38.5(2)(d)(1) and (2). If another notice requirement section is applicable, the district court should so indicate.



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MASHUQ A. QURESHI, M.D.) FILED
Plaintiff) AUG 31, 1989
) Civil Action
v.)
)
PHICO INSURANCE CO.,) No. 86-1964
Defendant)
)

MEMORANDUM OPINION

This case is presently before the Court on remand from the United States Court of Appeals for the District of Columbia Circuit. Defendant Phico Insurance Co. ("Phico") has renewed its motion for summary judgment on remand and plaintiff has filed an opposition. The sole issue on remand is whether this Court's pre-appeal holding that Phico was entitled to summary judgment may stand in light of the Court's erroneous reliance on an inapplicable section of the Code of



Virginia. For the reasons stated below, the Court holds that it may and again grants summary judgment for defendant.

I. BACKGROUND

Plaintiff, Dr. Qureshi originally filed this action pro se on July 15, 1986, against Phico, four individual directors of Phico, and National Capitol Reciprocal Insurance Co. (NCRIC). By order dated October 30, 1986, the Court granted the individual defendants' motion to dismiss. Thereafter, by order dated August 4, 1987, the Court granted the remaining defendants' motions for summary judgment.

Qureshi v. Phico Insurance Co., No.86-1964
(D.D.C.Aug.4,1987)

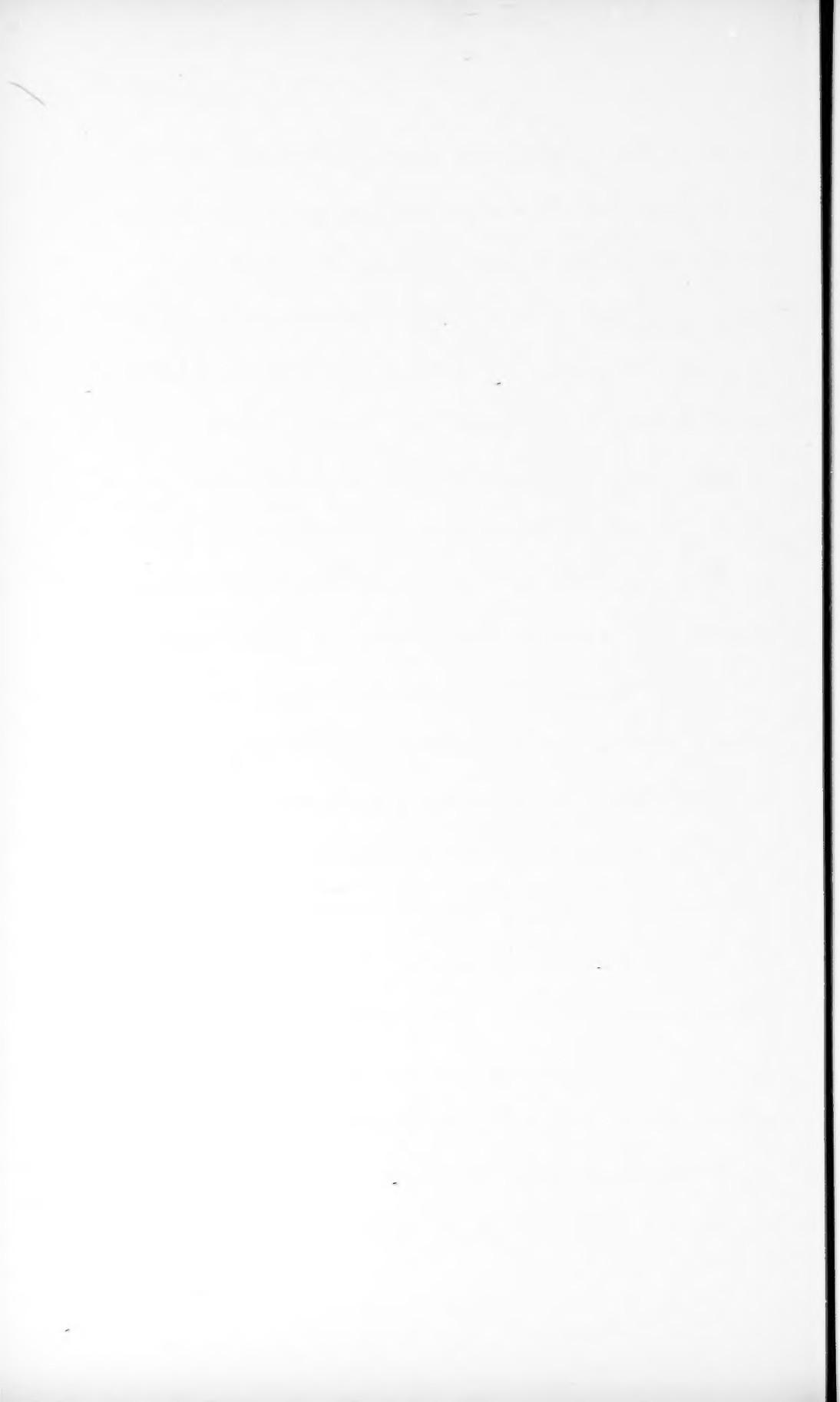
Plaintiff timely appealed both orders. On June 2, 1988, the United States Court of Appeals for the District of Columbia Circuit summarily affirmed this Court's August 4, 1987, order as to defendant



NCRIC, but remanded with instructions as to defendant Phico. See Qureshi v. Phico, No. 87-7175 (D.C.Cir., June 2, 1988) (per curiam). Although raised in plaintiff's appeal, the Court of Appeals did not address this Court's October 30, 1986, order dismissing the individual defendants.

In this Court's reading, therefore, only plaintiff's claims against defendant Phico are within the scope of the remand.

Dr. Qureshi's complaint against Phico and its individual directors arose out of Phico's refusal to renew his medical professional liability insurance in October 1985. The circumstances of Phico's nonrenewal of Dr. Qureshi's policy are set forth in the Court's August 4, 1987, opinion, and the Court adheres to its earlier determination that there are no genuine issues of material fact in this regard.



By its own terms, Dr. Qureshi's policy with Phico was to expire on October 15, 1985. Phico sent Dr. Qureshi a notice of nonrenewal dated September 4, 1985, and Dr. Qureshi's insurance agent, Ralph W. Lee & Co., also sent him a letter to this effect dated September 10, 1985. At his deposition, Dr. Qureshi acknowledged receiving both these notices.

See Qureshi Dep. at 46 (Feb.20,1987).

It is the adequacy of this notice of nonrenewal that is principally at issue in this case.

The Court previously held that Phico was neither contractually nor statutorily required to provide Dr.Qureshi with more notice of its decision not



to renew his policy. 1/ In holding that Phico did not violate any statutory notice requirements under Virginia law, the Court reasoned-- in reliance on defendant's briefs-- that "[a]t the time[Phico] made its decision not to renew plaintiff's policy, Virginia required 15 days notice of nonrenewal."

1/ The Court of Appeals made no reference to the contractual issue in remanding. To the extent the issue survived remand, however, the Court holds as before that Phico had no contractual obligation to provide greater notice than it did of its intention not to renew Dr. Qureshi's policy. Phico's contractual obligation under section 7 of the policy was to give Dr. Qureshi 60-days notice of its "termination" of the policy. However, as the Court previously found, the policy makes a clear distinction between "termination" and "nonrenewal," and the 60-day notice provision applies only to the former. Section 8 of the policy, concerning so-called "tail"coverage, specifically uses the phrase "upon termination or nonrenewal." Termination in this context clearly means cancellation of the policy before it expires, rather than declining to renew it after it expires. This distinction is also in accordance with general principles of insurance law. See, e.g., Couch on Insurance at §§ 68.6, 68.11(2d ed 1983); 13A. Appleman, Insurance Law & Practice at § 7642 (1976).



As ultimately discovered by the Court of Appeals, however, this Court's citation for this proposition, "Virginia Code, 38.1-38.5 (e) (2), "is nonexistent. The Court of Appeals graciously "assume[d] that this [was] a miscitation and that Phico and the district court meant to refer to Virginia Code, Section 38.1-38.5 (e) (2)(1985)." Though the section suggested by the Court of Appeals at least exists, it is also obviously inapplicable as it governs "Grounds and procedure for cancellation of or refusal to renew motor vehicle insurance policies." *Id.* (emphasis added) (now codified as amended at Va. Code Ann. § 38.2-2212 (Supp. 1989)).

Based on defendant's renewed motion for summary judgment and the Court's independent research on remand, there were in reality no applicable statutory notice provisions in effect in 1985.

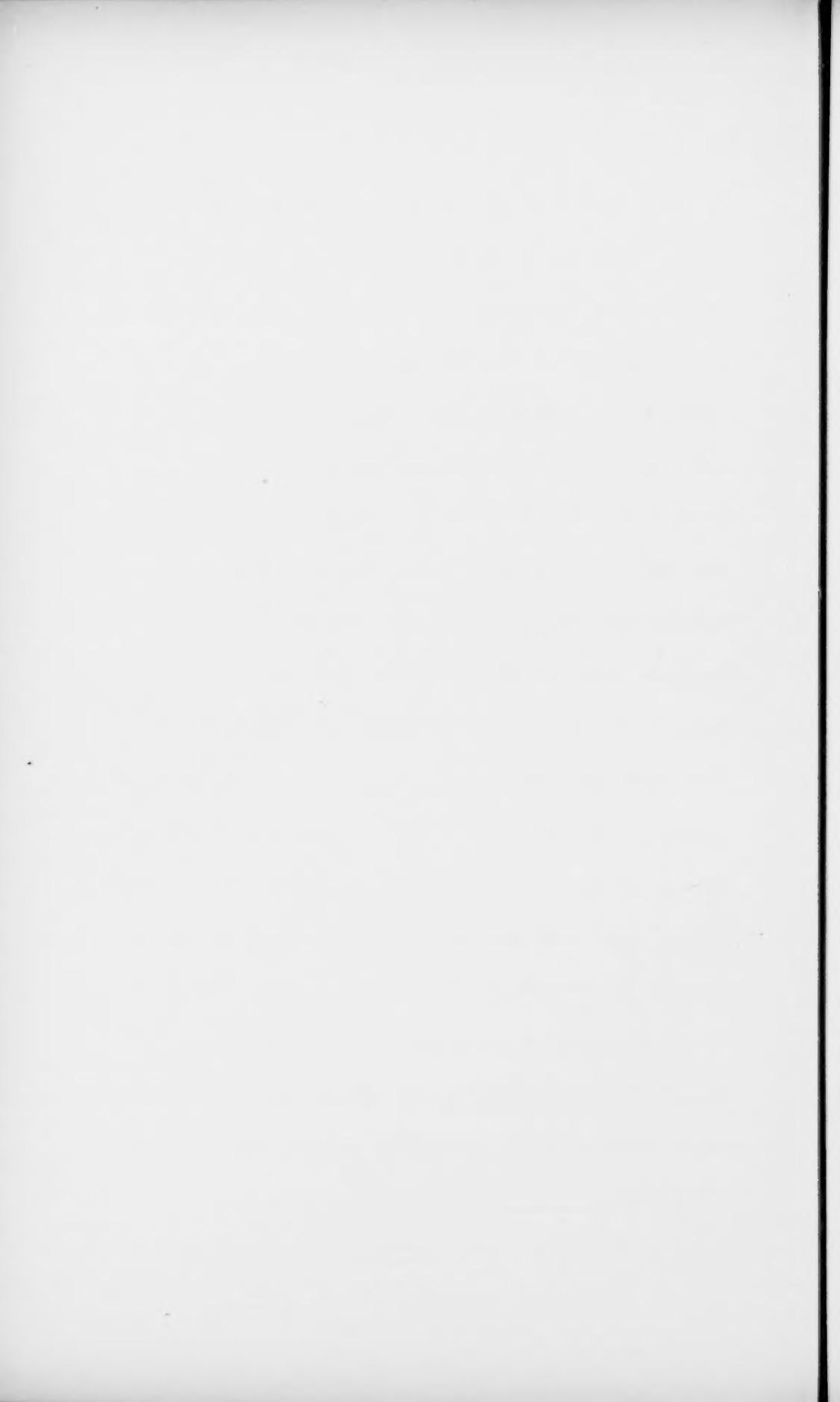


It was not until 1985. It was not until 1986 that Virginia enacted a notice provision applicable to cancellation of or refusal to renew professional liability insurance. See 1986 Va. Acts 376 (codified as amended at Va. Code Ann. § 38.2-231 (Supp. 1989)). The Court was aware of this 1986 enactment when it made its previous ruling and held that it was not retroactively applicable to Phico's actions in 1985.

Accordingly, the Court holds that Phico did not violate any then-applicable statutory notice provisions in refusing to renew Dr. Qureshi's policy. Phico is therefore entitled to summary judgment. An order in accordance with this memorandum opinion shall be issued herewith.

Thomas F. Hogan

Date: 30th August 1989 United States District Judge



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MASHUQ A. QURESHI, M.D.)

)

Plaintiff) Civil Action No. 86-1964

)

v.)

)

PHICO INSURANCE CO.,)

)

Defendant)

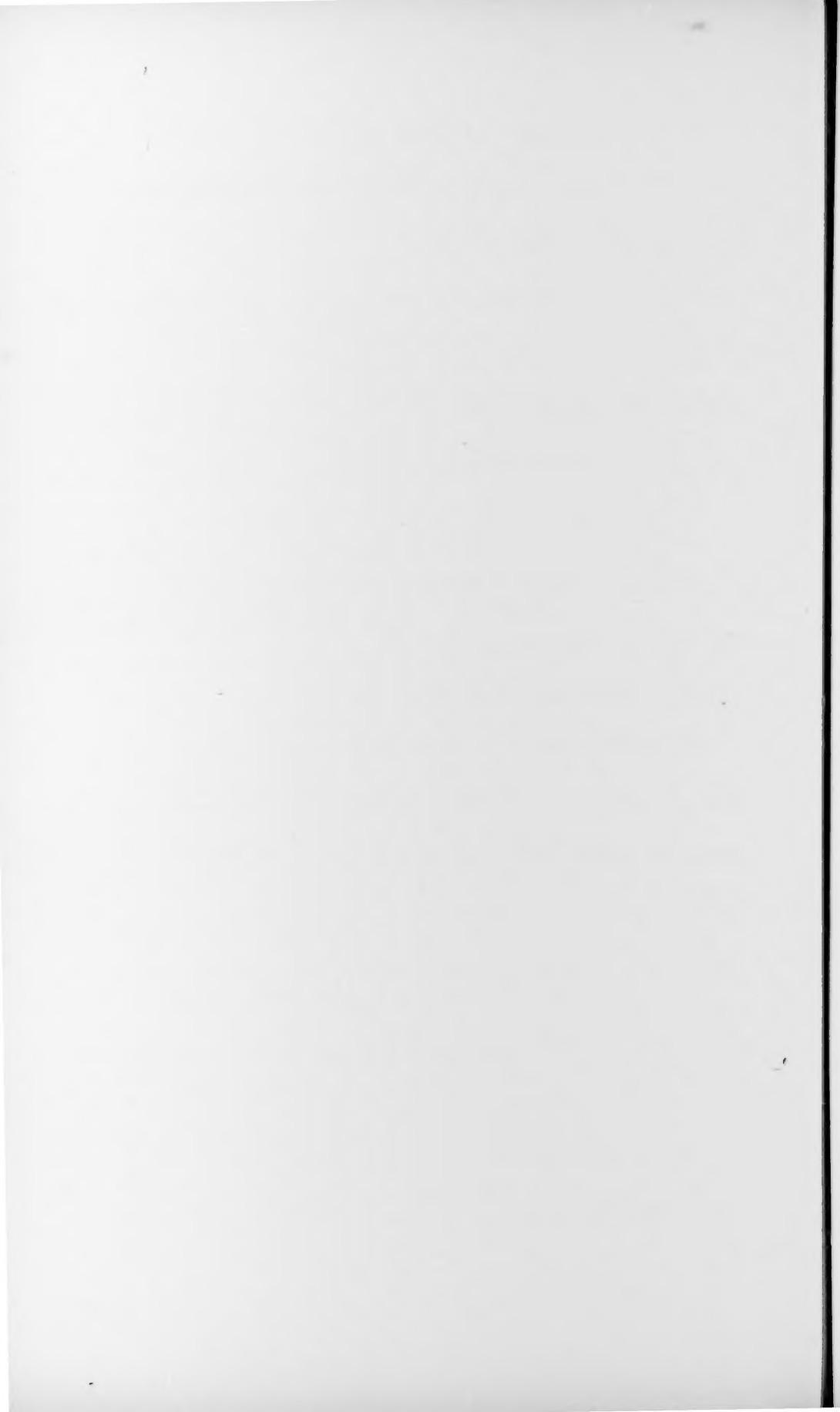
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O R D E R

In accordance with the memorandum
opinion issued herewith, it is this
30th day of August, 1989,
ORDERED that defendant's motion
for summary judgment shall be and is
hereby GRANTED and this case DISMISSED.

Thomas F. Hogan

United States District Judge



UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 89-7223

C.A. No. 86-01964

MASHUQ A. QURESHI, M.D.,

Appellant

FILED JUN 05, 1990

v.

PHICO INSURANCE CO., et al

BEFORE: Mikva, Buckley and D. H. Ginsburg,
Circuit Judges

O R D E R

Upon consideration of appellee Phico
Insurance Company's motion for summary
affirmance and the opposition thereto,
appellee National Capitol Reciprocal
Insurance Company's motion to dismiss
and the response thereto, and the court's
order to show cause and the response, it is

ORDERED that the court's order to show
cause of December 5, 1989 be discharged.

It is

FURTHER ORDERED that the motion to
dismiss be granted. This court
previously issued a final order summarily



affirming the district court's August 4, 1987 order as to appellee National Capitol Reciprocal Insurance Company. See Qureshi v. Phico, No. 87-7175, unpublished order (D.C. Cir. June 2, 1988). Consequently, appellant is now barred from relitigating this claim concerning appellee's refusal to issue insurance. See Laffey v. Northwest Airlines, 642 F.2d 578, 585 (D.C. Cir. 1980). It is

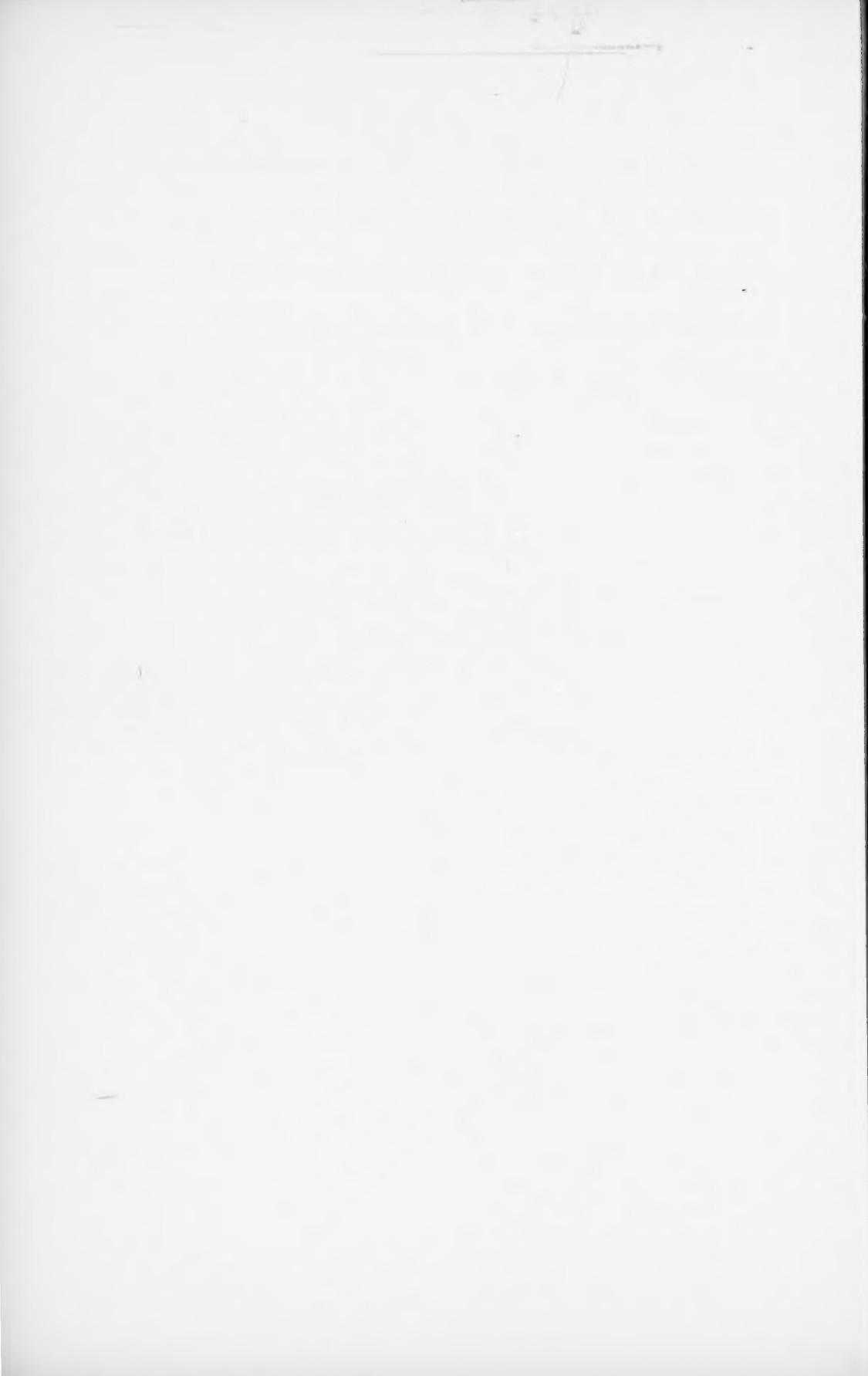
FURTHER ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to justify summary action. See Taxpayers Watchdog, Inc. v. Stanley, Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), cert. denied, 449 U.S. 994 (1980). The district court orders of October 30, 1986 and August 31, 1989 are affirmed substantially for the reasons stated therein.



The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing.

See D.C. Cir Rule 15.

Per Curiam



UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 89-7223) CA 80-1964
)
MASHUQ A. QURESHI, M.D.,)
)
Appellant) FILED
)
v.) AUG 6, 1990
)
PHICO INSURANCE CO., et al.,)
)

BEFORE: Mikva, Buckley and D.H. Ginsburg
Circuit Judges

O R D E R

Upon consideration of appellant's
petition for rehearing, filed July 3, 1990, it is
ORDERED, by the Court, that the petition
is denied.

Per Curiam

FOR THE COURT:

CONSTANCE L. DUPRE, CLERK

BY:

Robert A. Bonner
Deputy Clerk

Appendix F



Phico Insurance Policy.

IX Conditions.

7. Termination: This policy may be terminated by the named insured by written notice to the Company stating when thereafter the termination shall be effective. The Company will not terminate this policy, except for suspension or revocation of the insured's license or approval to provide health care services for non-payment of premium, unless notice of such termination shall have been given within 60 days after the initial effective date of the insured's coverage or unless a written notice stating the reasons for the termination and the date and time upon which termination becomes effective has been mailed to the insured 60 days prior to termination. In the event of termination as set forth herein, earned premium will be computed pro rata.



PENNSYLVANIA CASUALTY COMPANY

One Phico Drive/P.O. Box 85

Mechanicsburg, Pennsylvania 17055-0085

NOTICE OF NONRENEWAL

Nonrenewal Effective Date: 10/15/85

12:01 a.m Standard Time at the Address of
the Named Insured.

Date Prepared: 09/04/85

Named Insured and Address:

MASHUQ AHMAD QURESHI, M.D., P.C.

611 S. CARLIN SPRINGS RD. #104

ARLINGTON, VA 22204

Policy Number: PPL 001609

Policy Period: 10/15/84 - 10/15/85

Your policy will expire and not be re-
newed as of the nonrenewal effective date
above. Please arrange to secure replace-
ment coverage through your producer.

Appendix H



CODE OF VIRGINIA. 1981 REPLACEMENT

VOLUME 6A.

SECTION 38.1-57.5.

DEFINITIONS

Definition # 24:

"Termination of insurance coverage" or
"termination of an insurance policy"
means either a cancellation or non-
renewal of an insurance policy, in whole
or in part, for any reason other than the
failure to pay a premium as required by
the policy.

Appendix I



DISCTRRICT OF COLUMBIA CODE. INSURANCE.

Section 35-1533 Discriminations Prohibited.

Discrimination between individual
risks of the same class or hazard in the
amount of premiums or rates charged for
any policy, or in the benefits or amount
of insurance payable thereon, or in any
of the terms or conditions of such pol-
icy, or in any other manner whatsoever, is
prohibited, and the Superintendent is
empowered after investigation to order
removed at such time and in such manner
as he shall specify any such discrim-
ination which his investigation may reveal.

APPENDIX J

Rules, Regulations and Bylaws

of

National Capital Reciprocal Insurance Co.

ARTICLE II. Membership. Section I. Those eligible for membership shall be:

(a) Any person who is a doctor of medicine or osteopathy, licensed to practice medicine in the District of Columbia, provided that (i) such person is a member of the Medical Society of the District of Columbia (the "Society"), (ii) is engaged in the practice of medicine or ostopathy principally in the District of Columbia, and (iii) who, in the opinion of the Attorney-in-Fact, is deemed to be a desirable risk for purposes of the insurance afforded by the Company.

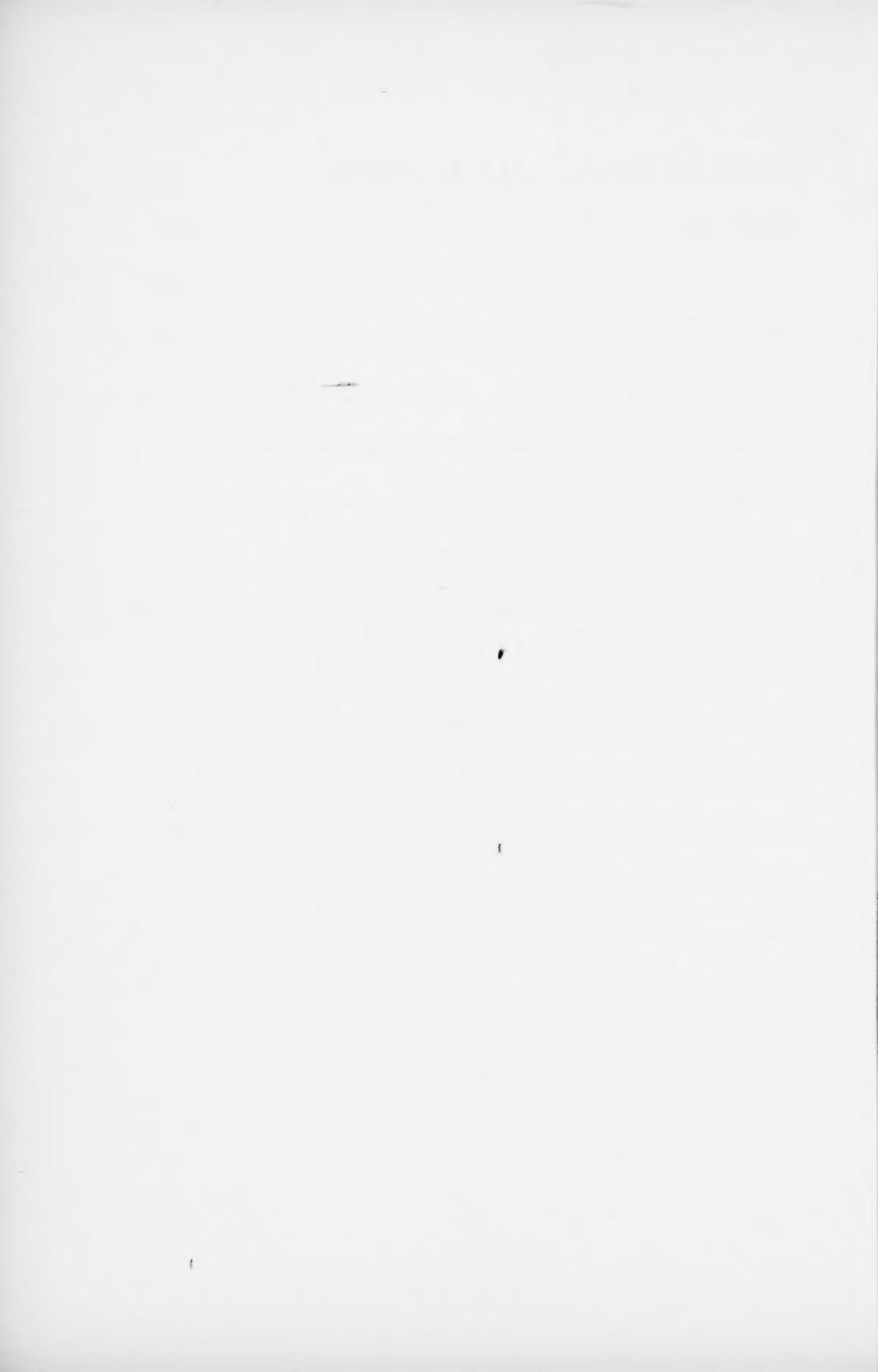
Appendix K

CONSTITUTION OF UNITED STATES

AMENDMENT 5. NO person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;

nor shall private property be taken for public use without just compensation.

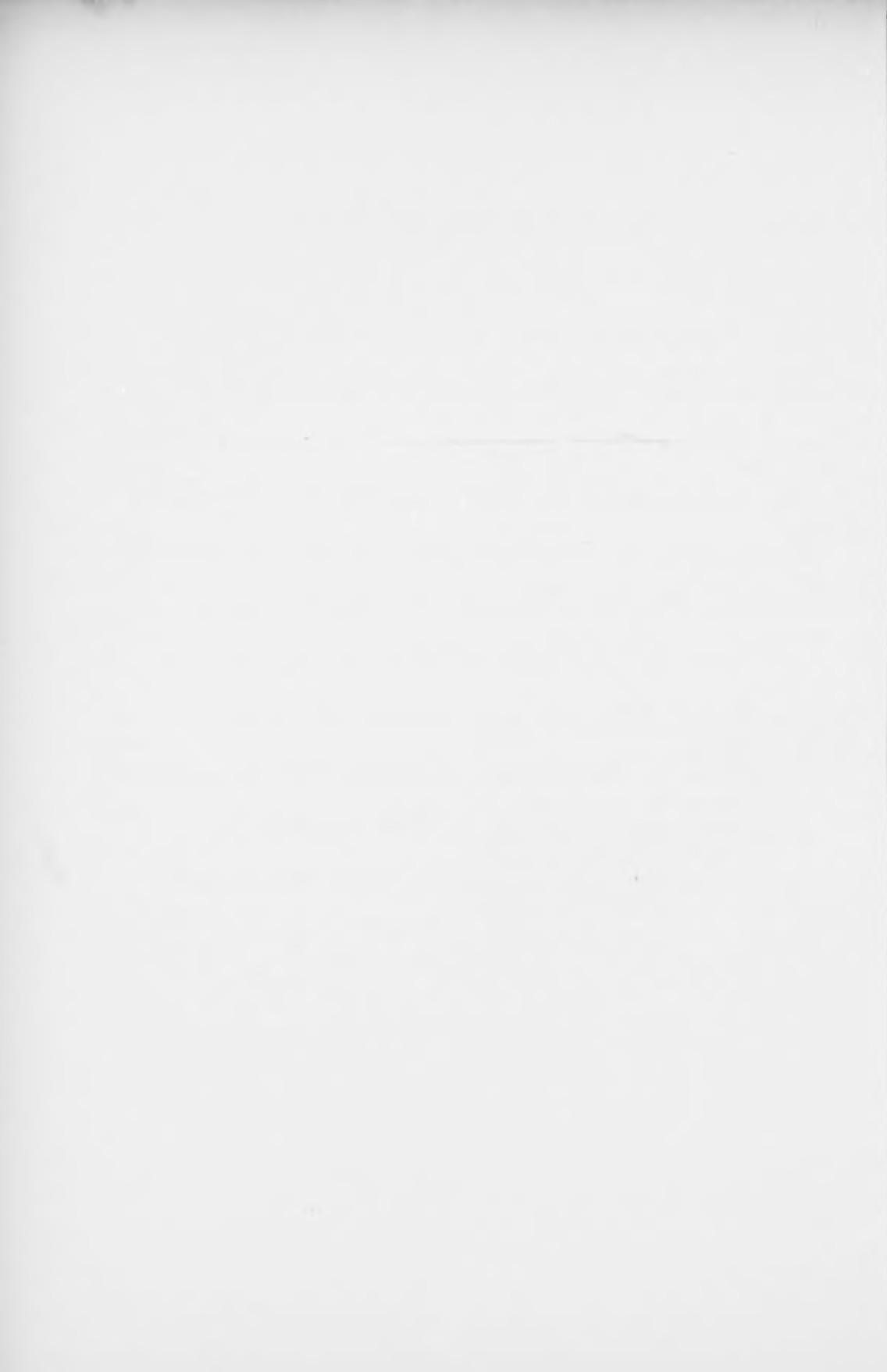
Appendix L



CONSTITUTION OF THE UNITED STATES

AMENDMENT 14. Section 1. - All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process law; nor deny to any person within its jurisdiction the equal protection of the laws.

Appendix M



IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1990

MASHUQ A. QURESHI, M.D.

Petitioner

v.

PHICO INSURANCE CO., et al

Respondant

PROOF OF SERVICE

The petitioner certifies under the
penalty of perjury that on November 5,
1990, 3 copies of this petition were
mailed postage prepaid first class to:-

WILLIAM F. CAUSEY, attorney
1605 New Hampshire Avenue, N.W.
Washington, D.C. 20009

JOHN LEWIS SMITH II
Suite 1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

Mashuq A. Qureshi
Mashuq A. Qureshi, M.D.
611 South Carlin Springs Rd.
Suite 104
Arlington, Virginia 22204

(2)
DEC 3 1990

No. 90-723

JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

MASHUQ A. QURESHI, M.D.,
Petitioner,
v.

PHICO INSURANCE COMPANY, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

BRIEF IN OPPOSITION OF
RESPONDENTS PHICO INSURANCE COMPANY,
DONALD G. STEFFES, MAYNARD R. STUFFT,
ARTHUR BECKER, AND JOSEPH RICCI, M.D.

WILLIAM F. CAUSEY *
MONTEDONICO & MASON, CHARTERED
1605 New Hampshire Avenue, N.W.
Washington, D.C. 20009
(202) 797-0700
Counsel for Respondents
PHICO Insurance Company,
Donald G. Steffes, Maynard
R. Stufft, Arthur Becker,
and Joseph Ricci, M.D.

* Counsel of Record

QUESTION PRESENTED

Whether this Court should review, in a diversity case, the reading by the Court of Appeals of the application of Virginia law to a private contract dispute.

STATEMENT REQUIRED BY RULE 29.1

Respondent PHICO Insurance Company is a wholly-owned subsidiary of PHICO Group, Inc. PHICO Group, Inc. is a wholly-owned subsidiary of The Hospital Association of Pennsylvania. PHICO Insurance Company owns Pennsylvania Insurance Management Company (PIMCO).

The individual respondents in this action are Donald G. Steffes, Maynard R. Stufft, Arthur Becker, and Joseph Ricci, M.D. These individuals were employees of Phico Group, Inc. at the time this civil action was filed.

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

No. 90-723

MASHUQ A. QURESHI, M.D.,

v.
Petitioner,

PHICO INSURANCE COMPANY, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

BRIEF IN OPPOSITION OF
RESPONDENTS PHICO INSURANCE COMPANY,
DONALD G. STEFFES, MAYNARD R. STUFFT,
ARTHUR BECKER, AND JOSEPH RICCI, M.D.

STATEMENT OF THE CASE

This case concerns a unanimous decision by the United States Court of Appeals for the District of Columbia Circuit (Mikva, Buckley and D.H. Ginsburg, JJ.) in which the court affirmed by *Per Curiam* Order the granting of summary judgment to Respondent PHICO Insurance Company ("PHICO").¹ Dr. Qureshi's petition for rehearing *en banc* was denied by the Court of Appeals.

¹ The individual respondents were dismissed by the District Court earlier in the case. The summary affirmance by the Court of Appeals also upheld the dismissal of the individual respondents. Pet. App. E at 2.

This dispute began on July 15, 1986 when Dr. Qureshi filed a civil action against PHICO, the individual respondents, and the National Capital Reciprocal Insurance Company ("NCRIC"). Dr. Qureshi, who is a non-board certified physician specializing in internal medicine, alleged that PHICO failed to provide him with appropriate notification when PHICO decided to not renew Dr. Qureshi's professional liability insurance. The claim against NCRIC concerns a decision by NCRIC to not issue a new professional liability policy to Dr. Qureshi after PHICO declined to renew coverage for Dr. Qureshi.

The undisputed record in this case is that in June, 1985, Dr. Qureshi advised PHICO that his privileges to admit or care for patients were suspended by Alexandria Hospital. These privileges were suspended after a series of hearings by the Executive Committee of the Medical Staff of the Hospital. Upon learning of the suspension of Dr. Qureshi's privileges at Alexandria Hospital, PHICO reviewed Dr. Qureshi's file and discovered that Dr. Qureshi had reported four claims during the four consecutive years that he was insured by PHICO. Based upon this information, PHICO advised Dr. Qureshi that it would not renew his policy for a fifth year. This decision was communicated to Dr. Qureshi forty-one days before the expiration of his policy on October 15, 1985.

In granting summary judgment to PHICO, the District Court found that although the PHICO insurance policy under review required that PHICO provide Dr. Qureshi with sixty days notice of cancellation of the policy, the policy was silent as to any notice period for non-renewal of the policy. Thus, as determined by the District Court, PHICO did not commit a breach of the insurance contract by providing Dr. Qureshi with forty-one days notice of non-renewal. Pet. App. B at 8-12. Moreover, the District Court held that there was no Vir-

ginia statutory period that mandated greater notice to Dr. Qureshi. Pet. App. D at 6-7.²

After unsuccessful appellate review, Dr. Qureshi now petitions this Court for a writ of certiorari.

REASONS FOR DENYING THE WRIT

Petitioner seeks review of a narrow decision by the Court of Appeals that resolved a private contract dispute between the parties. This case poses no federal issues. There is no federal constitutional or statutory provision worthy of review.³ Each argument advanced by Dr. Qureshi for granting the writ does not warrant the invocation of this Court's discretionary power of review.

Moreover, the decision by the Court of Appeals is eminently correct. The PHICO insurance policy under review, on its face, did not require a sixty day notice of non-renewal as argued by Dr. Qureshi. Equally clear is the fact that there was no Virginia statute in effect in 1985 that mandated a notice period for non-renewal of a professional liability insurance policy.

What Dr. Qureshi really objects to is the interpretation of Virginia law by the District of Columbia Circuit.

² PHICO's summary judgment proceeding was heard twice by the District Court and the Court of Appeals. The first ruling by the District Court granting summary judgment to PHICO erroneously cited a Virginia statute that concerned notification periods for automobile insurance. Pet. App. B at 12-13. The Court of Appeals noted the error and remanded the case to the District Court for further review. Pet. App. C at 4. On remand, the District Court found that there was no Virginia insurance statute applicable in 1985 on the issue of notification of non-renewal of professional liability insurance. Pet. App. D at 6-7. The Court of Appeals affirmed this finding as correct. Pet. App. E at 2.

³ The reference to the constitutional issue in the Questions Presented cannot stand as a basis for granting this writ. The summary affirmance by the Court of Appeals did not turn on any real or perceived constitutional issue, nor does Dr. Qureshi argue the constitutional issue as a reason for granting the writ. See Pet. at 8-11.

While, of course, this Court has the constitutional power to review a Court of Appeals' interpretation of state law in a diversity case such as this one, there is no need for such an extraordinary use of its powers here.

CONCLUSION

For these reasons, the petition should be denied.

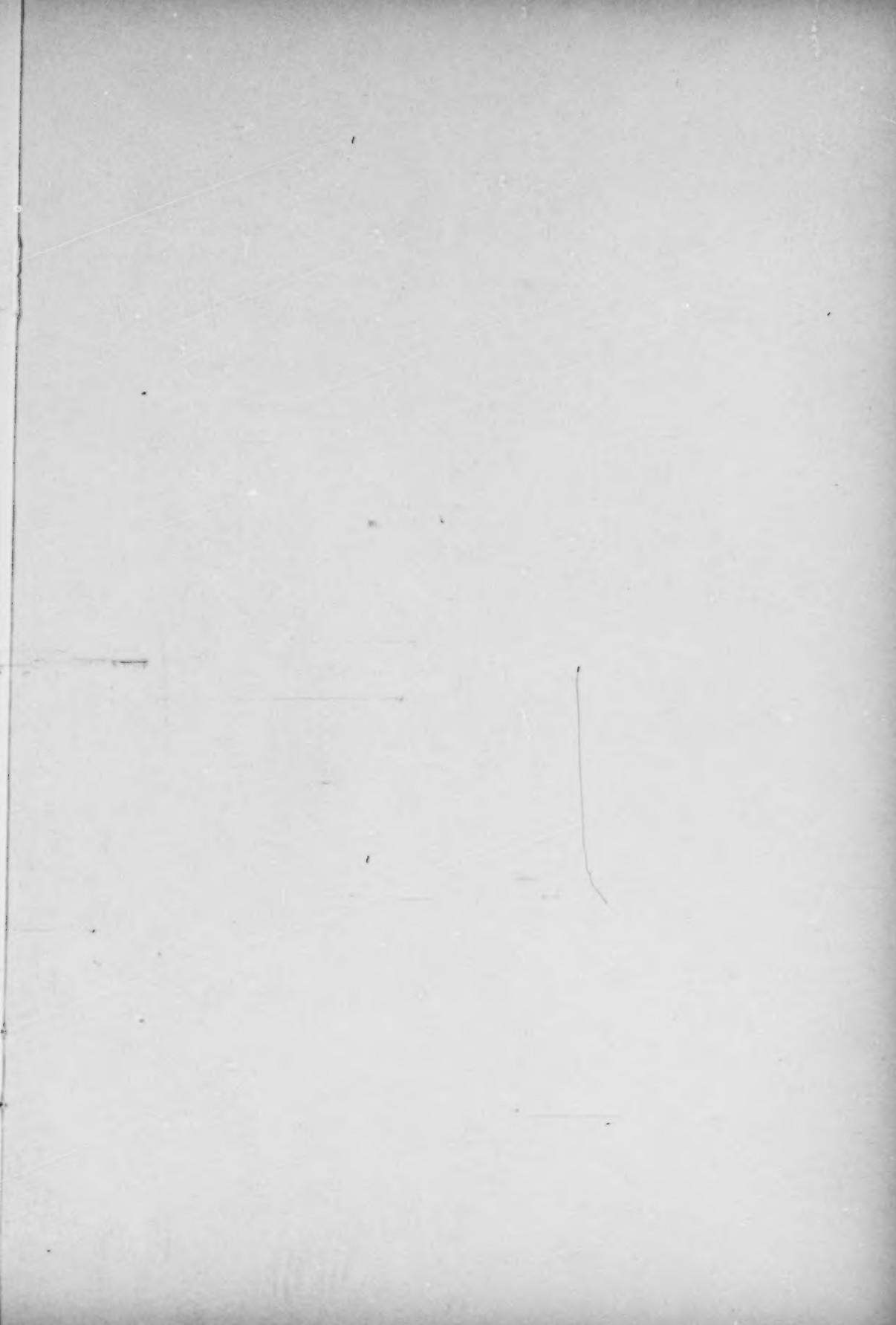
Respectfully submitted,

WILLIAM F. CAUSEY *
MONTEDONICO & MASON, CHARTERED
1605 New Hampshire Avenue, N.W.
Washington, D.C. 20009
(202) 797-0700

Counsel for Respondents

*PHICO Insurance Company,
Donald G. Steffes, Maynard
R. Stufft, Arthur Becker,
and Joseph Ricci, M.D.*

* Counsel of Record



FILED
DEC 7 1990

JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

MASHUQ A. QURESHI, M. D.,

Petitioner,

v.

PHICO INSURANCE COMPANY

and

NATIONAL CAPITOL RECIPROCAL INSURANCE COMPANY,
Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For District Of Columbia Circuit

BRIEF IN OPPOSITION OF
RESPONDENT NATIONAL CAPITOL RECIPROCAL
INSURANCE COMPANY

LEE T. ELLIS, JR.
Counsel of Record

BAKER & HOSTETLER
1050 Connecticut Ave. N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1500

*Counsel for Respondent
National Capitol
Reciprocal Insurance
Company*

QUESTION PRESENTED FOR REVIEW

Whether the Court should grant a petition for writ for certiorari to review an order which held that this respondent did not owe petitioner any statutory, contractual or common law duty in denying petitioner's application for liability insurance coverage and which did not involve an important question of federal law or conflict with any federal court of appeals or state court of last resort.

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district court's order
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

No. 90-723

MASHUQ A. QURESHI, M. D.,

Petitioner,

v.

PHICO INSURANCE COMPANY

and

NATIONAL CAPITOL RECIPROCAL
INSURANCE COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION

JURISDICTION

Petitioner's writ for certiorari does not present any issues properly before the Court on certiorari. Rule 17.1, Supreme Court Rules.

CONSTITUTION AND STATUTORY PROVISIONS

There are no constitutional or statutory provisions involved in the consideration of the issuance of professional liability insurance coverage in this case.

STATEMENT OF THE CASE

Petitioner asks this Court to review a decision of the United States Court of Appeals for the District of Columbia Circuit, affirming the district court's finding that respondent National Capitol Reciprocal Insurance Company ("NCRIC") did not owe petitioner any statutory, contractual or common law duty in denying petitioner's application for professional liability insurance. The district court's memorandum opinion is set forth in Petitioner's Appendix B. The circuit court issued a final order on June 2, 1988 affirming the

district court's order of August 4, 1987. The circuit court's order is reproduced at Exhibit A. Petitioner again sought the review of the circuit court, which issued an additional order on June 5, 1990 granting NCRIC's motion to dismiss and affirming the district court's decision for the second time. The circuit court's order is reproduced at Exhibit B. Petitioner subsequently sought a rehearing from the circuit court which was denied on August 6, 1990. The circuit court's order is set forth in Petitioner's Appendix F.

Petitioner now seeks a writ of certiorari based on the decisions of the courts below. The petition for writ of certiorari must be denied.

SUMMARY OF ARGUMENT

A writ of certiorari has not been properly presented by the petitioner under Rule 17.1, Supreme Court Rules. The petition does not present or involve a conflict among courts or an important question of federal law which has not been decided by the Court. The petitioner appears to be

attempting to appeal the decision of the circuit court, but has not followed the proper rules. Even if the Court were to consider the petition as an appeal, it lacks merit because it does not involve a substantial question of federal law and seeks the review of issues not described by the lower courts.

ARGUMENT

I.

A WRIT OF CERTIORARI IS NOT PROPER

The petition does not present or involve a conflict among courts or an important question of federal law which has not been decided by the Court. Rule 17.1, Supreme Court Rules. Petitioner claims he is entitled to writ for certiorari under Rule 10, Supreme Court Rules. Petitioner has confused the Court's rules for jurisdiction on appeal with jurisdiction on writ of certiorari. Rule 10 addresses jurisdiction on appeal from a federal court. However, the petitioner seeks a writ of certiorari. The factors for

consideration of the Court's review by certiorari are not addressed in petitioner's brief.

The denial of professional liability insurance coverage does not involve questions of federal or constitutional law, as alleged by petitioner. The petitioner alleges that his Fifth and Fourteenth Amendment rights were violated by the decision of the district court in holding that NCRIC did not owe any petitioner any statutory, contractual or common law duty in denying an application for professional liability insurance coverage. The Court does not consider issues not raised or litigated in the court of appeals. See E.E.O.C. v. Federal Labor Relations Authority, 476 U.S. 19, 24 (1986).

Petitioner's claim that respondent NCRIC arbitrarily and capriciously discriminated against petitioner in denying insurance coverage is without merit. "In the absence of a statute, it is purely voluntary on the part of the company as to whom it will insure, and it is under no duty to write insurance for any particular applicant." 12 Appleman,

Insurance Law and Practice, § 7121 (1981) (citations omitted). NCRIC has no legal duty to provide petitioner with professional liability coverage, and it has no contractual relationship with the petitioner. See Petitioner's Appendix B at 9. There is no legally cognizable claim by petitioner against NCRIC or any evidence of abuse of discretion by the lower courts.

Accordingly, the petition for writ of certiorari should be denied.

II.

PETITIONER'S ATTEMPT TO APPEAL THE CIRCUIT COURT'S ORDER MUST BE DISMISSED

If petitioner is seeking an appeal of the decisions of the circuit court, a motion to dismiss may be properly received by the Court if the appeal is not in conformity with the Court's rules.* Rule 16.1(a), Supreme Court Rules. An

* If the Court concludes that petitioner is seeking an appeal, respondent NCRIC respectfully requests that this brief be considered a motion to dismiss the appeal. See Rule 16.1(d), Supreme Court Rules.

appeal of a federal court decision under Rule 10 is not a petition for writ of certiorari and, accordingly, if this is an appeal, it is not in proper form. Rule 10, Supreme Court Rules.

An appeal may be properly dismissed where the judgment of the federal court does not present a substantial federal question. Rule 16.1(c), Supreme Court Rules. As shown in the discussion in Section I, *infra*, the denial of professional liability insurance coverage is not a substantial federal question of law and petitioner's appeal should be denied.

CONCLUSION

The petition for writ of certiorari should be denied.

Alternatively, petitioner's appeal of the circuit court's decision should be dismissed.

Respectfully submitted,

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EXHIBITS

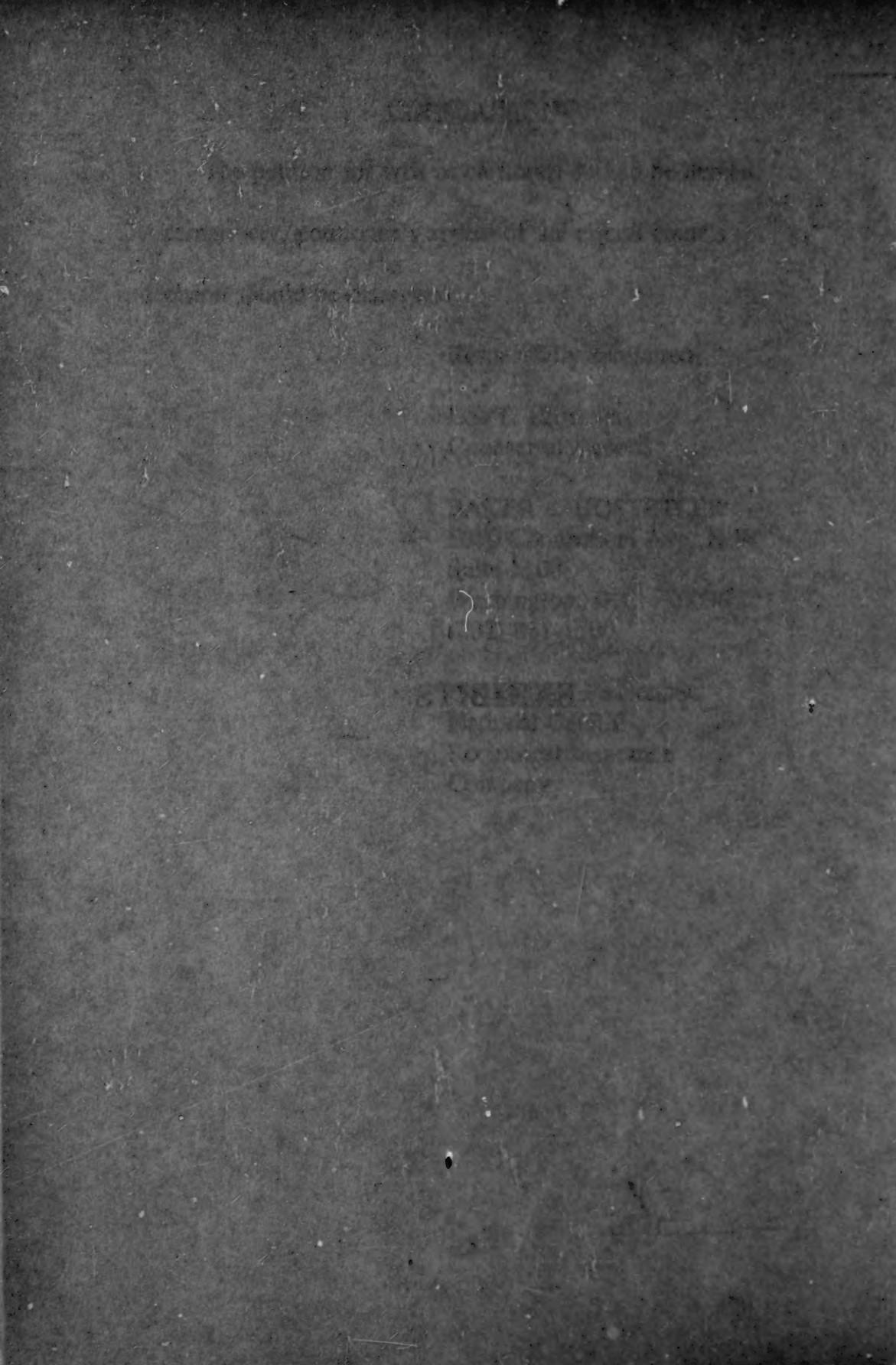


Exhibit A

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT,**

SEPTEMBER TERM, 1987

No. 87-7175

MASHUQ A. QURESHI, M.D.,

Appellant,

v.

PHICO INSURANCE COMPANY,

et al.

**Before: Silberman, D. H. Ginsburg and Sentelle,
Circuit Judges**

O R D E R

Upon consideration of appellees' motions for summary affirmance and the opposition thereto, it is

ORDERED by the court that National Capital Reciprocal Insurance Company's motion for summary affirmance be granted for the reasons stated by the district court in its Memorandum Opinion filed August 4, 1987. It is

FURTHER ORDERED that Phico Insurance Company's ("Phico") motion for summary affirmance be denied. It is

FURTHER ORDERED on the court's own motion that the case with regard to Phico be remanded to the district court for the reasons set forth in the accompanying memorandum.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam

Exhibit B

**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

SEPTEMBER TERM, 1989

No. 89-7223

MASHUQ A. QURESHI, M.D.,

Appellant,

v.

PHICO INSURANCE COMPANY,

et al.

**Before: Mikva, Buckley and D. H. Ginsburg,
Circuit Judges**

O R D E R

Upon consideration of appellee Phico Insurance Company's motion for summary affirmance and the opposition thereto, appellee National Capitol Reciprocal Insurance Company's motion to dismiss and the response thereto, and the court's order to show cause and the response, it is

ORDERED that the court's order to show cause of December 5, 1989 be discharged. It is

FURTHER ORDERED that the motion to dismiss be granted. This court previously issued a final order summarily affirming the district court's August 4, 1987 order as to appellee National Capitol Reciprocal Insurance Company. See Qureshi v. Phico, No. 87-7175, unpublished order (D.C. Cir. June 2, 1988). Consequently, appellant is now barred from relitigating this claim concerning appellee's refusal to issue insurance. See Laffey v. Northwest Airlines, 642 F.2d 578, 585 (D.C. Cir. 1980). It is

FURTHER ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to justify summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir.) (per curiam), cert. denied, 449 U.S. 994 (1980). The district court orders of October 30, 1986 and August 31, 1989 are affirmed substantially for the reasons stated therein.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam